



## **DEPARTMENT OF THE INTERIOR**

### **Bureau of Land Management**

#### **43 CFR Part 8360**

**[BLM\_CO\_FRN\_MO4500169724]**

### **Notice of Proposed Supplementary Rule for Canyons of the Ancients National Monument in Dolores and Montezuma Counties, CO**

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Proposed supplementary rule.

**SUMMARY:** The Bureau of Land Management (BLM) is proposing a supplementary rule to regulate conduct on public lands within Canyons of the Ancients National Monument (CANM or Monument). This proposed supplementary rule is needed to implement planning decisions in the 2010 CANM Resource Management Plan (RMP). The proposed supplementary rule would provide for the protection of persons, property, and public-land resources administered by the BLM's Tres Rios Field Office and CANM, located in Dolores and Montezuma Counties, Colorado.

**DATES:** Comments on the proposed supplementary rule must be received or postmarked by [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Comments submitted after the close of the comment period or delivered to an address other than the one listed in this notice may not be considered or included in the administrative record for the development of the final supplementary rule.

**ADDRESSES:** Please send comments to the Bureau of Land Management, Canyons of the Ancients National Monument, 27501 Highway 184, Dolores, CO 81323; by fax to (970) 385-3228, or email comments to [tfouss@blm.gov](mailto:tfouss@blm.gov). Please include "Proposed Supplementary Rule" in the subject line.

**FOR FURTHER INFORMATION CONTACT:** Tyler Fouss, Field Staff Ranger, Bureau of Land Management, Tres Rios Field Office, 29211 Hwy 184, Dolores, CO 81323; telephone (970) 882-1131; email: tfouss@blm.gov. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

**SUPPLEMENTARY INFORMATION:**

- I. Public Comment Procedures
- II. Background
- III. Discussion
- IV. Procedural Matters
- V. Proposed Supplementary Rule

**I. Public Comment Procedures**

Written comments on the proposed supplementary rule should be specific, confined to issues pertinent to the proposed supplementary rule, and should explain the reason for any recommended change. Where possible, comments should reference the specific section or paragraph of the rule that the comment is addressing.

Comments, including names, addresses, and other contact information of respondents, will be available for public review at the BLM CANM address listed (see **ADDRESSES** Section) during regular business hours.

Before including your address, phone number, email address, or other personal identifying information in your comment, be aware that your entire comment – including personal identifying information – may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

## **II. Background**

The BLM proposes to establish this supplementary rule under the authority of 43 CFR 8365.1–6, which authorizes BLM State Directors to establish supplementary rules for the protection of persons, property, and public lands and resources.

CANM is part of the BLM's National Conservation Lands and consists of approximately 178,000 acres of BLM-administered public lands located in Dolores and Montezuma Counties in the Four Corners region of southwestern Colorado. President Clinton established CANM on June 9, 2000, by Presidential Proclamation Number 7317, pursuant to Section 2 of the Antiquities Act of 1906 (34 Stat. 225, 16 U.S.C. 431), to preserve the cultural and natural objects of the Monument. Prior to the Proclamation, CANM was managed as the Anasazi Culture Multiple Use Area of Critical Environmental Concern, established through the 1985 San Juan-San Miguel RMP Record of Decision (ROD).

The BLM developed the CANM RMP with extensive input from the public, Tribes, and elected officials through scoping, opportunities for public comment, and advisory committee meetings.

The BLM signed the CANM RMP and ROD in June 2010, replacing portions of the San Juan-San Miguel RMP/ROD and incorporating the management principles and policies found in the Presidential Proclamation establishing CANM. The CANM RMP identifies specific management actions that restrict certain activities and define allowable uses within CANM. The proposed supplementary rule would implement these management actions and make them enforceable.

This proposed supplementary rule would implement the management decisions in the CANM RMP related to collecting geological and biological materials, recreational sporting activities, camping, and travel management. Within the Sand Canyon-Rock Creek Special Recreation Management Area (SRMA), activities such as hiking, mountain

biking, and horseback riding and packing would be allowed only on designated travel routes, as provided in the CANM RMP.

### **III. Discussion of the Proposed Supplementary Rule**

This is the first time the BLM has proposed a supplementary rule for CANM.

The purpose of the proposed supplementary rule is to protect public health and safety and prevent damage to natural and cultural resources, as well as other resources, objects, and values identified in the Proclamation and the CANM RMP. Certain activities, by their very nature, have the potential to adversely impact the resources and objects the Monument was established to protect. The CANM RMP contains management actions directing how the BLM manages those activities, consistent with the Proclamation. Many uses are permissible so long as the objects of the Monument are protected. Additionally, the average user is unlikely to notice changes resulting from the establishment of this supplementary rule implementing the CANM RMP.

The Proclamation established CANM to protect resources, objects, and values including archaeology, geology, raptors and other bird species, and reptiles. CANM contains the highest density of archaeological sites in the United States, with an average of one site eligible for listing on the National Register of Historic Places every 6 acres, or an estimated 30,000 sites on this landscape. The BLM is responsible for protecting all the resources for which the Monument was designated and for avoiding or minimizing impacts to them.

*Proposed supplementary rule numbers 1 through 4* address collecting resources on CANM. The Monument Proclamation prohibits appropriating, injuring, destroying, or removing Monument features and withdraws the lands and interests in lands from entry, location, and disposition under the public land laws, including the mining laws, except for certain oil and gas development activities. The CANM RMP more specifically prohibits the recreational collection of paleontological or geological resources, the

scientific collection of paleontological or geological resources without a permit, and the cutting or gathering of firewood. Proposed supplementary rule numbers 1 through 3 would allow enforcement of these restrictions.

The CANM RMP restricts pinyon pine nut harvesting to 22.5 pounds for personal or traditional use and prohibits commercial harvesting. Proposed supplementary rule number 4 would allow enforcement of these limitations.

*Proposed supplementary rule number 5* addresses recreational target shooting within CANM. The RMP prohibits recreational shooting within CANM due to the potential for damage to archaeological sites, particularly rock art. In the past, shooters have used native vegetation, as well as skeet litter and discarded appliances, for target practice. This proposed supplementary rule would prohibit recreational shooting. Because the Proclamation does not enlarge or diminish the State's jurisdiction over wildlife management, hunting with a valid Colorado hunting license is allowed within the Monument, to the extent permissible under State law.

*Proposed supplementary rule number 6* addresses geocaching within CANM. The CANM RMP prohibits geocaching due to the potential for irrevocable harm to objects in the Monument's archaeological sites. A common problem with this activity is geocachers use the Monument's archaeological sites to conceal items, or caches, as part of a quasi-treasure hunt. Geocachers often camouflage their caches by moving rocks or organic material from their original site, which can significantly damage the site's archaeological values. The large number of potential cache sites within the Monument makes this a serious concern. Proposed supplementary rule number 6 would prohibit geocaching and similar activities.

*Proposed supplementary rule number 7* addresses rock climbing within CANM. This proposed supplementary rule would prohibit rock climbing,

rappelling, and bouldering within the Monument except for areas designated as open to climbing within the Mockingbird Mesa Recreation Area Management Zone. Climbing and bouldering have the potential to adversely affect archaeological sites and nesting raptors in certain locations. Climbing to cliff dwellings on unstable slopes can be dangerous and undermine archaeological features. Scrambling up cliffs also can be a safety issue due to unstable geological formations. Natural oils from hands, climbing chalk, and permanent fixed hardware on climbing routes can cause irreversible impacts to archaeological sites. Furthermore, climbing activities are likely to disturb or displace raptor populations, especially nesting pairs, that reside in the Monument in high densities. Currently, one area within the Mockingbird Mesa Recreation Area Management Zone is designated as open to climbing. The BLM may, consistent with the CANM RMP, consider establishing additional climbing areas within this zone in the future.

*Proposed supplementary rule numbers 8 through 14* address camping and campfires within CANM to provide a more enjoyable experience for visitors and to limit impacts from higher visitation in specific management zones and developed recreation sites.

The CANM RMP prohibits camping in or near sensitive resources and areas that experience the highest visitor use in the Monument. This prohibition is necessary to minimize impacts camping could cause to those resources, including the potential for the illegal collecting or moving of artifacts, the compromising of scientific research, and the contamination of the archaeological record. Proposed supplementary rule numbers 8, 9, and 11 would allow enforcement of these prohibitions.

*Proposed supplementary rule number 10* would require campsites to be located at least 300 feet away from riparian areas and the Monument's limited water sources, to reduce stress on the wildlife that rely on them.

*Proposed supplementary rule numbers 12 and 13* would prohibit campfires in and near sensitive resources and the Monument's high visitor use areas.

In areas where campfires are allowed, *proposed supplementary rule number 14* would require fires only be built in firepans, or, if available, BLM-provided fire rings.

*Proposed supplementary rule numbers 15 through 20* address travel management and access within CANM, consistent with the CANM RMP. Access restrictions and trail designations in the Monument help preserve key scenic, cultural, and wildlife habitat resources that attract visitors to these public lands and minimize conflicts among the different types of users. Proposed supplementary rule number 15 would restrict mechanized travel to designated travel routes.

BLM policy directs Wilderness Study Areas (WSA) be managed to prevent the impairment of their wilderness characteristics, and the CANM RMP designates no routes for motorized or mechanized travel in WSAs.

*Proposed supplementary rule number 16* would prohibit motorized or mechanized vehicles in WSAs.

*Proposed supplementary rule numbers 17 and 18* would prohibit parking in riparian areas, more than 20 feet from the edge of a designated travel route, or in a manner that would damage Monument resources.

To protect cultural resources in the Sand Canyon-Rock Creek SRMA, which is the most highly visited recreation area in the Monument, the CANM RMP restricts hiking and horseback riding/packing to designated travel routes approved for their use.

*Proposed supplementary rule numbers 19 and 20* would allow enforcement of these restrictions. Horses, pack animals, and hikers would be allowed both on and off designated travel routes on the remaining 169,000 acres of the Monument outside of the SRMA.

#### **IV. Procedural Matters**

##### Executive Order 12866, Regulatory Planning and Review

This proposed supplementary rule is not a significant regulatory action and is not subject to review by the Office of Management and Budget under Executive Order 12866. This proposed supplementary rule would not have an annual effect of \$100 million or more on the economy. It is not intended to affect commercial activity, but rather to impose rules of conduct for public use on a limited area of public lands. It would not adversely affect, in a material way, the economy, productivity, competition, jobs, environment, public health or safety, State, local, or Tribal governments, or communities. This proposed supplementary rule would not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency.

The rule would not materially alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients; nor would it raise novel legal or policy issues. It merely strives to protect public safety and the environment.

##### Regulatory Flexibility Act

Congress enacted the Regulatory Flexibility Act (RFA) of 1980, as amended (5 U.S.C. 601–612), to ensure that Government regulations do not unnecessarily or disproportionately burden small entities. The RFA requires a regulatory flexibility analysis if a rule would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. This proposed supplementary rule would merely establish rules of conduct for public use of a limited area of public lands.



Therefore, the BLM has determined under the RFA this proposed supplementary rule would not have a significant economic impact on a substantial number of small entities.

#### Congressional Review Act

This proposed supplementary rule does not constitute a “major rule” as defined at 5 U.S.C. 804(2). It would not have an annual effect on the economy of \$100 million or more. This proposed supplementary rule would merely establish rules of conduct for public use of a limited area of public lands.

#### Unfunded Mandates Reform Act

This proposed supplementary rule would not impose an unfunded mandate on State, local, or Tribal governments in the aggregate, or the private sector, of more than \$100 million per year, nor would they have a significant or unique effect on small governments. This proposed supplementary rule would merely impose reasonable rules of conduct on public lands in Colorado to protect natural resources and public safety. Therefore, the BLM is not required to prepare a statement containing the information required by the Unfunded Mandates Reform Act, 2 U.S.C. 1531 et seq.

#### Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights (Takings)

This proposed supplementary rule is not a government action capable of interfering with constitutionally protected property rights. This proposed supplementary rule does not address property rights in any form and would not cause the impairment of constitutionally protected property rights. Therefore, the BLM has determined this proposed supplementary rule would not cause a “taking” of private property or require further discussion of takings implications under this Executive Order.

#### Executive Order 13132, Federalism

This proposed supplementary rule would not have a substantial direct effect on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. This proposed supplementary rule would not conflict with any State law or regulation. Therefore, in accordance with Executive Order 13132, the BLM has determined this proposed supplementary rule does not have sufficient Federalism implications to warrant preparation of a Federalism Assessment.

#### Executive Order 12988, Civil Justice Reform

Under Executive Order 12988, the BLM has determined this proposed supplementary rule would not unduly burden the judicial system and the requirements of sections 3(a) and 3(b)(2) of the Order are met.

#### Executive Order 13175, Consultation and Coordination with Indian Tribal Governments

In accordance with Executive Order 13175, the BLM has determined this proposed supplementary rule does not include policies that have tribal implications and would have no bearing on trust lands or on lands for which title is held in fee status by American Indian tribes or U.S. Government-owned lands managed by the Bureau of Indian Affairs. Since this supplementary rule would not involve Indian reservation lands or resources, the BLM has determined government-to-government relationships remain unaffected. This proposed supplementary rule would merely establish rules of conduct for public use of a limited area of public lands.

#### Paperwork Reduction Act

This proposed supplementary rule does not contain information collection requirements the Office of Management and Budget must approve under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 - 3521.

#### National Environmental Policy Act

The BLM published its CANM Draft RMP/Draft Environmental Impact

Statement (EIS) in October 2007, which incorporated analysis and input provided by the public; local, State, and other Federal agencies and organizations; Native American tribes; cooperating agencies; and BLM staff. After considering public comments and additional input, analysis, and review, the BLM published its CANM Proposed RMP/Final EIS in July 2009. The BLM signed the CANM RMP and ROD in June 2010, after full consideration of alternatives and analysis of public input. The CANM RMP seeks to provide an optimal balance between authorized resource uses and the protection and long-term sustainability of sensitive cultural and natural resource values within the planning area, consistent with the Proclamation. This proposed supplementary rule would allow the BLM to implement the measures approved in the CANM RMP and to enforce decisions developed to protect public health and safety and public lands within CANM. This proposed supplementary rule would not change the decisions set forth in the CANM RMP.

On November 18, 2020, the BLM completed a Determination of NEPA Adequacy for the proposed CANM supplementary rule. The BLM confirmed the NEPA analysis contained in the Final EIS for the CANM RMP was sufficient to inform its consideration of the proposed supplementary rule.

Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This proposed supplementary rule does not comprise a significant energy action. This proposed supplementary rule would not have an adverse effect on energy supply, production, or consumption and have no connection with energy policy.

Information Quality Act

In developing this proposed supplementary rule, the BLM did not conduct or use a study, experiment or survey requiring peer review under the Information Quality Act (Section 515 of Pub. L. 106-554).

## Executive Order 13352, Facilitation of Cooperative Conservation

In accordance with Executive Order 13352, the BLM has determined this proposed supplementary rule would not impede facilitating cooperative conservation; would take appropriate account of and consider the interests of persons with ownership or other legally recognized interests in land or other natural resources; would properly accommodate local participation in the Federal decision-making process; and would provide that the programs, projects, and activities are consistent with protecting public health and safety.

### Clarity of this Supplementary Rule

Executive Order 12866 requires each agency to write regulations that are simple and easy to understand. The BLM invites your comments on how to make this proposed supplementary rule easier to understand, including answers to questions, such as the following:

1. Are the requirements in the proposed supplementary rule clearly stated?
2. Does the proposed supplementary rule contain technical language or jargon that interferes with their clarity?
3. Does the format of the proposed supplementary rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?
4. Would the proposed supplementary rule be easier to understand if it were divided into more (but shorter) sections?
5. Is the description of the proposed supplementary rule in the **SUPPLEMENTARY INFORMATION** section of this preamble helpful in understanding the proposed supplementary rule? How could this description be more helpful in making the proposed supplementary rule easier to understand?

Please send any comments you may have on the clarity of the proposed supplementary rule to the address specified in the **ADDRESSES** section.

## Author

The principal author of this proposed supplementary rule is Tyler Fouss, Field Staff Ranger, Tres Rios Field Office, Colorado.

## **V. Proposed Supplementary Rule**

For the reasons stated in the preamble, and under the authority for supplementary rules at 43 U.S.C. 1733a and 1740, 43 U.S.C. 315a, and 43 CFR 8365.1-6, the BLM Colorado State Director proposes a supplementary rule for public lands managed by the BLM in CANM, to read as follows:

### PROPOSED SUPPLEMENTARY RULE FOR CANYONS OF THE ANCIENTS NATIONAL MONUMENT (CANM)

#### **Definitions:**

Archaeological Site is a physical context and location containing material remains that evince past human activity and allow for its interpretation. Within CANM, these material remains may include, but are not limited to, historic and prehistoric structures, features, rock art, shrines, burials, quarries, artifact concentrations, and occupied rock alcoves.

Bouldering means any style of rock climbing undertaken without a rope.

Campfire means any outdoor fire used for warmth or cooking.

Camping means the erecting of a tent or shelter of natural or synthetic material, preparing a sleeping bag or other bedding material for use, parking of a motor vehicle, motor home or trailer, or mooring of a vessel, for the apparent purpose of overnight occupancy.

Commercial use means for the purpose of financial gain.

Designated travel route means roads, primitive roads, and trails open to specified modes of travel and identified on a map of designated roads, primitive roads, and trails that is maintained and available for public inspection at the BLM. Designated roads, primitive roads, and trails are open to public use in accordance with such limits and restrictions as are, or may be, specified in the CANM RMP or travel management plan, or in future

decisions implementing the RMP. This definition excludes any road or trail with BLM-authorized restrictions that prevent use of the road or trail. Restrictions may include signs or physical barriers such as gates, fences, posts, branches, or rocks.

Geocaching means an outdoor recreational activity in which the participants use a Global Positioning System receiver or other navigational techniques to hide and seek containers called "geocaches" or "caches."

Mechanized vehicle means any device propelled solely by human power, upon which a person, or persons, may ride on land, having any wheels and/or tracks with the exception of a wheelchair.

Public lands means any land or interest in land owned by the United States and administered by the Secretary of the Interior through the BLM without regard to how the United States acquired ownership.

Riparian area means lands that are located along watercourses and water bodies. Typical examples include flood plains and streambanks. They are distinctly different from surrounding lands because of unique soil and vegetation characteristics that are strongly influenced by the presence of water.

Special Recreation Management Area (SRMA) means an administrative unit where the existing or proposed recreation opportunities and recreation setting characteristics are recognized for their unique value, importance, or distinctiveness, especially as compared to other areas used for recreation.

Target shooting means discharging a weapon for recreational purposes when game animals are not being legally hunted.

Weapon means any firearm, cross bow, bow and arrow, paint gun, fireworks, or explosive device capable of propelling a projectile either by means of an explosion, compressed gas, or by string or spring.

Wilderness Study Area (WSA) means an area inventoried, found to have wilderness characteristics, and managed to preserve those characteristics under authority of (a) the land use planning direction found in Section 202 of the Federal Land Policy and Management Act of 1976 (FLPMA), or (b) the review of public lands required by Section 603 of FLPMA. WSAs identified during the land use planning process (Section 202 of FLPMA) and prior to 1993 were forwarded to Congress; those identified during or after 1993 were not.

### **Prohibited Acts**

Unless otherwise authorized, the following acts are prohibited on all public lands, roads, trails, and waterways administered by the BLM within CANM:

#### **Collection of Resources:**

1. You must not collect fossils of any kind, including vertebrate, invertebrate, plant, or trace fossils, unless authorized by permit.
2. Unless otherwise permitted under applicable law, you must not collect or remove any rock, mineral specimen, semiprecious gemstone, or petrified wood.
3. You must not cut or collect live, dead, or downed wood.
4. You must not harvest more than 22.5 pounds of pinyon pine nuts for personal use.  
You must not harvest pinyon pine nuts for commercial use.

#### **Target Shooting:**

5. You must not discharge any weapon within the Monument, except in accordance with State law when hunting with a valid Colorado hunting license.

#### **Geocaching:**

6. You must not engage in any cache-type activities (including geocaching and earth caching).

#### **Climbing and Bouldering:**

7. You must not participate in climbing, including rock climbing, rappelling, or

bouldering outside of designated climbing areas.

**Camping and Campfires:**

8. You must not camp in the Pueblo Sites SRMA (Painted Hand Pueblo, Lowry Pueblo, and Sand Canyon Pueblo), in the Sand Canyon-Rock Creek SRMA, or in the Anasazi Heritage Center SRMA.
9. You must not camp within 300 feet of a developed recreation site/area.
10. You must not camp within 300 feet of a riparian area or water source.
11. You must not camp in archaeological sites, rock shelters, or alcoves.
12. You must not ignite or maintain a campfire in the Pueblo Sites SRMA (Painted Hand Pueblo, Lowry Pueblo, and Sand Canyon Pueblo), Sand Canyon-Rock Creek SRMA, or Anasazi Heritage Center SRMA.
13. You must not ignite or maintain a campfire in archaeological sites, rock shelters, or alcoves.
14. You must use a fire pan for campfires or charcoal fires when a metal fire ring is not provided or unless using a mechanical stove or other appliance fueled by gas and equipped with a valve that allows the operator to control the flame.

**Travel Management:**

15. You must not operate or possess a mechanized vehicle on any route, trail, or area that is not designated as open to such use by a BLM sign, map, or the appropriate travel management plan, unless you have specific authorization from the BLM.
16. You must not operate or possess a motorized or mechanized vehicle in any Wilderness Study Area.
17. You must not park more than 20 feet from the edge of a designated travel route or in a manner that causes resource damage.
18. You must not park in riparian areas.
19. Within the Sand Canyon-Rock Creek SRMA (as defined in the CANM RMP), you



must not ride or be in possession of horses or other pack animals on any route, trail, or area not designated as open to such use by a BLM sign, map, or the appropriate travel management plan. Horses and pack animals are allowed both on and off designated travel routes throughout the remainder of the Monument.

20. Within the Sand Canyon-Rock Creek SRMA (as defined in the CANM RMP), you must not hike on any route, trail, or area not designated as open to such use by a BLM sign, map, or the appropriate travel management plan. Hiking is allowed both on and off designated travel routes throughout the remainder of the Monument.

### **Exemptions**

The following persons are exempt from this supplementary rule: Federal, State, local or military employees acting within the scope of their duties; members of any organized law enforcement, rescue, or fire-fighting force in performance of an official duty; and any person, agency, or municipality whose activities are authorized in writing by the Canyons of the Ancients National Monument Manager.

### **Enforcement**

Any person who violates any part of this supplementary rule may be tried before a United States Magistrate and fined up to \$1,000, imprisoned no more than 12 months, or both, in accordance with 43 U.S.C. 1733(a), 18 U.S.C. 3571, and 43 CFR 8360.0-7. In accordance with 43 CFR 8365.1-7, State or local officials may also impose penalties for violations of Colorado or local law.

**Douglas Vilsack,**

*Bureau of Land Management,*

*Colorado State Director.*